

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of the Virginia Division of Gas and Oil Director's Decision IFFH 8294 dated March 4, 1994 (hereinafter the "Decision") in the matter of Jewell Smokeless Coal Corporation, Coal Operator (hereinafter "Jewell Smokeless"), vs. Ashland Exploration, Inc. (hereinafter "Ashland"), Proposed Well PKG-18 (hereinafter "Well"), Docket Number VGOB 94-0419-0439

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 17th day of May, 1994, upon Jewell Smokeless' Petition for Appeal of Director's Decision IFFH 8294 dated March 4, 1994, which found that Jewell Smokeless' coal interests in the vicinity of the Well were in the Jawbone Seam, that there was no past or current mining of the Jawbone Seam in the vicinity of the Well, and that Jewell Smokeless' mining of the Jawbone Seam in the vicinity of the Well is projected to occur in approximately 5 years. The Director in applying the standards of Va. Code §§ 45.1-361.11.B and 45.1-361.12, found that the Well would not unreasonably interfere with the projected coal operations of Jewell Smokeless in the Jawbone Seam of coal, dismissed Jewell Smokeless' request for a stay to the permit for the Well, and ruled in favor of Ashland's application by issuing a permit for the Well.

Elizabeth McClanahan of the firm Penn, Stuart, Eskridge and Jones appeared at the hearing as counsel for Jewell Smokeless; Donald R. Johnson, Esq., appeared as counsel for Lon B. Rogers-Bradshaw Trust Number One and Lon B. Rogers-Bradshaw Trust Number Two (hereinafter collectively the "Trusts"); Grant McGuire of the firm Campbell, Woods, Bagley, Emerson, McNeer and Herndon appeared as counsel for Ashland; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.

History of Proceedings

1. On November 19, 1993, Ashland filed with the Virginia Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, its application for a permit for the Well (herein "Application").

2. By letter dated December 1, 1993, and received by the Division of Gas and Oil on December 6, 1993, Jewell Smokeless filed objections to the location for the Well reflected in the Application pursuant to Va. Code § 45.1-361.35 and requested a stay of the permit on the grounds (1) that the proposed well work directly impinges upon Jewell Smokeless Coal Corporation's interest; (2) is an unreasonable and arbitrary exercise of Ashland Exploration Inc.'s right to explore for market and produce gas; and (3) unreasonably interferes with the planning, production, and safe recovery of Jewell Smokeless Coal Corporation's coal reserves in the vicinity of the Well.

3. An Informal Fact Finding Hearing was held on February 14, 1994 before the Director of the Division of Gas and Oil pursuant to §9-6.14:11 of the Code of Virginia.

4. The Director, Division of Gas and Oil, issued his decision in Docket IFFH 8294 on March 4, 1994, and subject to the conditions contained in the Director's letter of March 11, 1994, issued Permit 2648 dated March 10, 1994 for the Well.

5. On March 14, 1994 Jewell Smokeless filed its Petition for Appeal of Director's Decision with the Virginia Gas and Oil Board (herein "Board") pursuant to Va. Code §45.1-361.36.

6. By Order of Stay of Permit #2648 dated March 14, 1994, pursuant to Va. Code § 45.1-361.9.C., the Director placed a Stay on Permit #2648 until the Board rendered this decision on Jewell Smokeless' Petition for Appeal or until such stay was dissolved or the appeal decided by the circuit court.

#### FINDINGS OF FACT

7. Jewell Smokeless and the Trusts allege ownership of coal reserves in the Jawbone seam in that area of the Well which may be impacted by the application of Va. Code § 45.1-92.1 (herein referred to as "vicinity of the Well"), and Jewell Ridge Coal Corporation alleged ownership of coal reserves in the Red Ash seam located in the vicinity of the Well.

8. Jewell Smokeless, as a coal owner, objected to the location of the Well by requesting that the Director stay drilling operations for the Well until Jewell Smokeless' projected mining in the vicinity of the Well is complete. Jewell Ridge Coal Corporation filed objections to the location of the Well with the Director, but subsequently withdrew said objections. The Trusts, as coal owners, support the location of the Well as depicted in the Application.

9. There is no past or current mining of coal in the Jawbone Seam in the vicinity of the Well. Jewell Smokeless' testified that its plans to mine its coal reserves in the Jawbone seam in the vicinity of the well contemplate that mining will occur in approximately five (5) years with access to said reserves to be through mine openings in Kentucky which have not yet been established.

10. Jewell Smokeless filed with the Virginia Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (herein "DMLR") Revision #9205898 to its coal surface mining permit for its Dominion Mine No. 16 mining operations to extend the boundaries (herein "PMU") of their existing Permit No. 1201345 to include Jewell Smokeless coal reserves in the vicinity of the Well by addressing the surface effects of their proposed underground coal mining operations primarily in the Red Ash seam in the extended Permit Area (See Va. Code §§ 45.1-234 and 45.1-243). Revision #9205898 to Permit No. 12010345 was approved by the DMLR on October 7, 1993. Coal surface mining permits issued pursuant to the requirements of Va. Code §§ 45.1-234 are for a term of five years.

11. Jewell Smokeless has filed with the Virginia Department of Mines, Minerals and Energy, Division of Mines (herein "DM") plans for its Dominion Mine No. 16 showing mine projections for the coal reserves in the Red Ash seam, but not in the Jawbone seam or in the vicinity of the Well, and no mine licenses have been issued for mining operations in the vicinity of the Well.

12. The well is located within a 180-acre drilling unit in the Pilgrims Knob Gas Field established by the Board's Order entered June 17, 1991 pursuant to Va. Code § 45.1-361.20 (herein "Field Rules").

#### CONCLUSIONS OF LAW

In considering the criteria set forth in §§ 45.1-361.11.B and 45.1-361.11.C, Code of Virginia, 1950 as amended, the Board finds:

a. That Ashland's drilling of the Well as proposed by Ashland in advance of Jewell Smokeless' proposed mining in the Jawbone seam can be done safely with respect to persons engaged in coal mining at or near the Well site.



b. Once drilled, the Well can be operated safely with respect to persons engaged in coal mining at or near the Well site by adherence to the procedures established by Va. Code § 45.1-92.1.

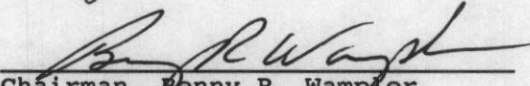
c. The proposed Well location meets the requirements of Va. Code § 45.1-361.12 and the Board's Field Rules.

d. The maximum period of time for which the Director is authorized by Va. Code § 45.1-361.11.C.3. to impose a drilling moratorium on the Well Permit, in order to allow completion of coal mining operations in the vicinity of the Well prior to the commencement of drilling operation, is for a period of two (2) years.

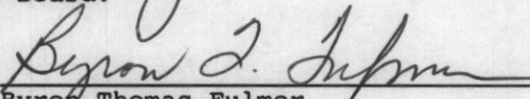
e. When considering all the factors presented by the coal owner and by the gas and oil owner, the proposed drilling location constitutes a reasonable exercise of Ashland's right to explore for, market and produce gas, and said location does not unreasonably interfere with the future coal mining operations of Jewell Smokeless in the vicinity of the Well.

Accordingly, this Board affirms the Inspector's decision.

DONE AND EXECUTED this 2nd day of June, 1994, by Order of this Board.

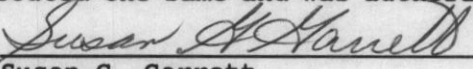
  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 2nd day of June, 1994, by a majority of the Virginia Gas and Oil Board.

  
Byron Thomas Fulmer  
Principal Executive to the Staff  
Virginia Gas and Oil Board

STATE OF VIRGINIA )  
COUNTY OF WISE )

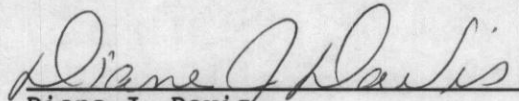
Acknowledged on this 2nd day of June, 1994, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, hat he executed the same and was authorized to do so.

  
Susan G. Garrett  
Notary Public

My Commission expires: 7/31/94

STATE OF VIRGINIA )  
COUNTY OF WISE )

Acknowledged on this 2<sup>nd</sup> day of June, 1994, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron T. Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Diane J. Davis  
Notary Public

My Commission expires: 9/30/97